



# Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

April 24, 1987

Mr. Dennis P. Blackhurst  
Udall, Shumway, Blackhurst,  
Allen, Lyons & Davis, P.C.  
30 West First Street  
Mesa, Arizona 85201

Re: I87-054 (R87-039)

Dear Mr. Blackhurst:

Pursuant to A.R.S. § 15-253(B) this office has reviewed the opinion expressed in your December 1, 1986 letter to Mr. Pat Pomeroy, Assistant Superintendent, Mesa Unified School District No. 4, as to whether a school district is legally required to have job applicants tested for pulmonary tuberculosis. We concur with your conclusion that testing is not legally required and revise your opinion as follows.

A.R.S. § 15-505(A) prohibits the employment in the schools of any person afflicted with pulmonary tuberculosis. However, the statute does not specifically set forth the manner in which it shall be determined that an applicant is tuberculosis free. Furthermore, although the language of A.R.S. § 15-505(A) was enacted into law in 1912 (Laws 1912, Ch. 27, § 1), no rules mandating procedural steps for the statute's implementation have been adopted.

Therefore, the Board is not required by law to conduct pre-employment testing for pulmonary tuberculosis.

However, the use of such test results to deny or terminate employment should not be undertaken without considering the effect of the recent United States Supreme Court ruling in School Board of Nassau County, Florida, et al v. Arline, 408 U.S. \_\_\_, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987). In Arline, the court held that the use of tuberculosis testing results to deny or terminate employment summarily violates Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

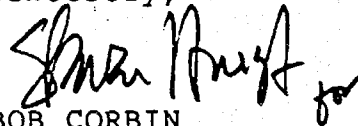
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Section 504 states:

No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of the title, shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

Failure of a school district receiving federal funds to comply with Section 504 may result in the cut-off of federal assistance pursuant to the applicable administrative regulations, Byers v. Rockford Mass Transit District, 635 F.Supp. 1387, 1390 (N.D. Ill. 1986), and an action for damages by the person alleging discrimination. 29 U.S.C. § 794a(1)(2); Jones v. Metropolitan Atlanta Rapid Transit Authority, 681 F.2d 1376 (11th Cir. 1982) cert. denied, 465 U.S. 1099, 104 S.Ct. 1591, 80 L.Ed.2d 123 (1984); Byers, 635 F.Supp. at 1390-1391.

Sincerely,



BOB CORBIN  
Attorney General

BC:RET:CRJ:jas

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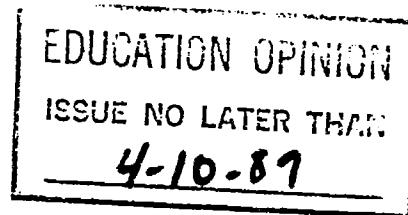
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December 1, 1986

R87- 039

*Martin*  
*2/12/87*

Mr. Pat Pomeroy  
Assistant Superintendent  
for Personnel  
Mesa Public Schools  
549 N. Stapley Dr.  
Mesa, AZ 85203



Re: Opinion Letter -  
Pre-Employment Screening of Applicants  
for Pulmonary Tuberculosis.

Dear Mr. Pomeroy:

You have asked our law firm to determine whether you are legally required to have job applicants tested for pulmonary tuberculosis.

The applicable statute is A.R.S. § 15-505(A), which states, "No person shall be employed in the schools when afflicted with pulmonary tuberculosis." (See attached copy of this statute). As you can see, the statute itself does not require that applicants be tested prior to employment. However, the Arizona State Department of Health has interpreted the statute to require pre-employment testing for pulmonary tuberculosis. DHS has published "Guidelines for use in connection with A.R.S. §15-505." (See attached copy of Guidelines). In the Introduction to the Guidelines, DHS cites to A.R.S. § 15-505 as authority for its position that persons who are undergoing pre-employment screening for schools must be certified to be free to communicable pulmonary tuberculosis. In the Guidelines, DHS recommends that candidates for employment be required to present a certificate from a private physician or county health department attesting that the candidate was examined and was determined to be free of evidence of pulmonary tuberculosis.

UDALL, SHUMWAY, BLACKHURST,  
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December 1, 1986  
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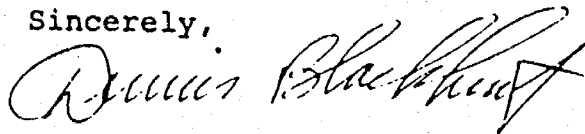
We spoke with Mr. Harvel Alishouse, Deputy Manager, Office of Infectious Disease Services, DHS, to determine what force of law DHS Guidelines have. Mr. Alishouse stated that he did not think the Guidelines were mandatory, but that he really was not certain. He recommended that we put our question in writing so that he could forward it to the Arizona State Attorney General for an opinion. We have done this and will send you a copy of the Attorney General's response when we receive it. Mr. Alishouse told us that only 270+ cases of pulmonary tuberculosis were reported last year, and it is, therefore, unlikely that a school applicant would have the disease. Still, there was one case of a teacher-applicant having the disease in one of Arizona's rural school districts.

We also spoke with the State Department of Education. They stated that it is up to each district to decide whether to require pre-employment screening. The Department of Education has no rules or regulations pertaining to pulmonary tuberculosis testing.

It is our opinion that you probably are not legally required to have applicants pre-screened for pulmonary tuberculosis. However, it is our recommendation that you err on the side of caution, and continue to require pre-employment screening at least until the Attorney General renders an opinion.

Please do not hesitate to call the undersigned if you have any questions.

Sincerely,



Dennis P. Blackhurst

DPB/crm

att. (2)

cc: Dr. James Zaharis